

U.S. Department of  
Homeland Security

United States  
Coast Guard



Director  
United States Coast Guard  
National Pollution Funds Center

US COAST GUARD STOP 7100  
4200 WILSON BLVD STE 1000  
ARLINGTON VA 20598-7100

Fax: 703-872-6113

5890

8/20/2014

Harbor Beach Area Fire Department  
ATTN: Chief John Lermont  
202 N. Huron Ave., P.O. Box 57  
Harbor Beach, MI 48441

Re: Claim Number 914098-0001

Dear Chief Lermont:

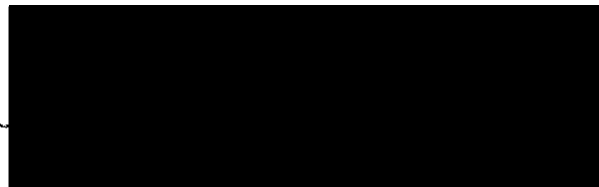
The National Pollution Funds Center (NPFC) in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on your claim number 914098-0001. Please see the enclosed Claim Summary/Determination Form for further explanation.

You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. If, however you find that you will be unable to gather particular information within the time period, you may include a request for an extension of time for a specified duration with your reconsideration request.

Reconsideration of the denial will be based upon the information provided. A claim may be reconsidered only once. Disposition of that reconsideration in writing will constitute final agency action. Failure of the NPFC to issue a written decision within 90 days after receipt of a timely request for reconsideration shall, at the option of the claimant, be deemed final agency action. All correspondence should include claim number 914098-0001.

Mail reconsideration requests to:

Director (ca)  
NPFC CA MS 7100  
US COAST GUARD  
4200 Wilson Blvd, Suite 1000  
Arlington, VA 20598-7100



Claims Manager  
U.S. Coast Guard

ENCL: Claim Summary / Determination Form

## CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 914098-0001
Claimant	: Harbor Beach Area Fire Department
Type of Claimant	: Local Government
Type of Claim	: Removal Costs
Claim Manager	: Alyssa Lombardi
Amount Requested	: \$6,199.00

### **FACTS:**

#### ***A. Oil Spill Incident:***

The National Response Center (NRC) reports<sup>1</sup> that on April 7, 2014, a sheen was discovered in Sebewaing Harbor Marina in Huron County, MI. The harbor is located on the Sebewaing River, a navigable waterway of the US. Michigan Department of Environmental Quality (MDEQ) contacted the Harbor Beach Fire Department and requested that they deploy boom in the Sebewaing River in order to contain the oil spill on the river.

A Responsible Party (RP) has not been identified for this spill.

#### ***B. Description of removal actions performed:***

The Claimant, Harbor Beach Area FD (HBFD), personnel arrived on-scene on April, 7, 2014, and placed booms diagonally in the river to channel the oil to one spot by the boat ramps. Booms were also placed by two inlets. The team then put down absorbent pads in the area where the oil had collected. The pads were then collected and put in plastic bags and placed in a dumpster to be taken to a Class-A landfill. The booms were left in place to collect any residue left in the river.

Three days later, HBFD personnel returned to replace the booms. They were picked up and placed in plastic bags and, again, taken to a Class-A landfill.

***C. The Claim:*** On July 30, 2014, Harbor Beach submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of its uncompensated removal costs in the amount of \$6,199.00 for the services provided on April 7, 2014. This claim is for removal costs based on the rate schedule in place at the time services were provided. A copy of the vendor rate schedule is provided in the claim file.

The review of the actual cost invoicing and dailies focused on: (1) whether the actions taken were compensable "removal actions" under OPA and the claims regulations at 33 CFR 136 (e.g., actions to prevent, minimize, mitigate the effects of the incident); (2) whether the costs were incurred as a result of these actions; (3) whether the actions taken were consistent with the NCP or directed by the FOSC, and (4) whether the costs were adequately documented.

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<sup>1</sup> See NRC Report # 1079099, opened April 7, 2014.

## **APPLICABLE LAW:**

Under OPA 90, at 33 USC § 2702(a), a responsible party for a vessel or facility from which oil is discharged or which poses a substantial threat of a discharge of oil, into or upon the navigable waters or adjoining shorelines is liable for removal costs and damages resulting from such incident.

"Oil" is defined in relevant part, at 33 USC § 2701(23), to mean "oil of any kind or in any form, including petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil".

"Removal costs" are defined as "the costs of removal that are incurred after a discharge of oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from an incident". 33 USC § 2701(31).

Removal costs referred to in 33 USC 2702(a) include any removal costs incurred by any person for acts taken by that person which are consistent with the National Contingency Plan. 33 USC 2702(b)(1)(B).

The Oil Spill Liability Trust Fund (OSLTF), which is administered by the NPFC, is available, pursuant to 33 USC §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 CFR Part 136, to pay claims for uncompensated removal costs that are determined to be consistent with the National Contingency Plan and uncompensated damages.

With certain exceptions all claims for removal costs or damages shall be presented first to the responsible party of the source designated under 2714(a). 33 U.S.C. § 2713(a). If the claim is not settled by any person by payment within 90 days after the date the claim was presented, the claimant may elect to commence an action in court against the responsible party or present the claim to the Fund. 33 U.S.C. §2713(c)(2).

"Claimant" means "any person or government who presents a claim for compensation under this subchapter." 33 USC § 2701(4).

33 USC § 2712(f), which is entitled "Rights of Subrogation," provides that payment of any claim or obligation by the Fund under this Act shall be subject to the United States Government acquiring by subrogation all rights of the claimant or State to recover from the responsible party.

Any person, including the Fund, who pays compensation pursuant to this Act to any claimant for removal costs or damages shall be subrogated to all rights, claims, and causes of action the claimant has under any other law. 33 USC § 2715(a).

Under 33 CFR 136.105(a) and 136.105(e)(6), the claimant bears the burden of providing to the NPFC, all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

Under 33 CFR 136.105(b) each claim must be in writing, for a sum certain for each category of uncompensated damages or removal costs resulting from an incident. In addition, under 33 CFR 136.203, the claimant bears the burden to prove the removal costs were reasonable in response to the scope of the oil spill incident, and the NPFC has the authority and

responsibility to perform a reasonableness determination. Specifically, under 33 CFR 136.203, “a claimant must establish –

- (a) That the actions taken were necessary to prevent, minimize, or mitigate the effects of the incident;
- (b) That the removal costs were incurred as a result of these actions;
- (c) That the actions taken were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC.”

Under 33 CFR 136.205 “the amount of compensation allowable is the total of uncompensated reasonable removal costs of actions taken that were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC. Except in exceptional circumstances, removal *activities* for which costs are being claimed must have been coordinated with the FOSC.” [Emphasis added].

### **DETERMINATION OF LOSS:**

#### **A. Overview:**

1. The NPFC has determined that the actions undertaken by the Claimant are not consistent with the NCP. FOSC Coordination must also be obtained through US EPA FOSC Region V.
2. In accordance with 33 CFR § 136.105(e)(12), the claimant has certified no suit has been filed in court for the claimed uncompensated removal costs.
3. The claim was submitted within the six year statute of limitations. 33 U.S.C. § 2712(h)(1).
4. A Responsible Party has not been identified. 33 U.S.C. § 2701(32).
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that all removal costs presented were for actions in accordance with the NCP and that the costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205.

#### **B. Analysis:**

NPFC CA reviewed the actual cost invoices and dailies to confirm that the claimant had incurred all costs claimed. The review focused on: (1) whether the actions taken were compensable “removal actions” under OPA and the claims regulations at 33 CFR 136 (e.g., actions to prevent, minimize, mitigate the effects of the incident); (2) whether the costs were incurred as a result of these actions; (3) whether the actions taken were determined by the FOSC, to be consistent with the NCP or directed by the FOSC, and (4) whether the costs were adequately documented and reasonable. The Claims Manager validated the costs incurred and determined they were reasonable and necessary and performed in accordance with the National Contingency Plan (NCP).

The claim submission shows that the Claimant disposed of all boom as residual waste at the direction of the Michigan Department of Environmental Quality (MI DEQ). The Claimant’s submission also states the boom was disposed of in a Class-A landfill per the direction of the MI DEQ. The National Contingency Plan (NCP) located at 40 CFR § 300.310 Phase III – Containment, countermeasures, cleanup, and disposal states in relevant part....”(c) Oil and contaminated materials recovered in cleanup operations shall be disposed of in accordance with the [Regional Contingency Plan], [Area Contingency Plan], and any applicable laws,

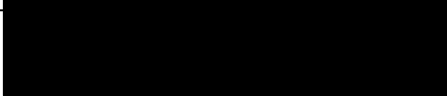
regulations, or requirements. RRT and Area Committee guidelines may identify the disposal options available during an oil spill response and may describe what disposal requirements are mandatory or may not be waived by the OSC.”

The NPFC had determined that the actions undertaken by the Claimant were not properly coordinated with the FOSC in accordance with 33 CFR §136.203 and §205 nor has the Claimant demonstrated that the disposal was performed in accordance with the NCP; therefore on that basis, this claim is denied.

Should the Claimant request to have its claim reconsidered, the Claimant needs to obtain FOSC Coordination from US EPA Region V and provide documentary evidence that the disposal was performed in accordance with 40 CFR § 300.310 Phase III – Containment, countermeasures, cleanup, and disposal states in relevant part. . . .”(c) Oil and contaminated materials recovered in cleanup operations shall be disposed of in accordance with the [Regional Contingency Plan], [Area Contingency Plan], and any applicable laws, regulations, or requirements. RRT and Area Committee guidelines may identify the disposal options available during an oil spill response and may describe what disposal requirements are mandatory or may not be waived by the OSC.”

**C. Determined Amount: \$0.00**

The NPFC hereby determines that the OSLTF will pay \$0.00 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim 914098-0001.

Claim Supervisor:	
Date of Supervisor's review:	8/20/14
Supervisor Action:	<b>Denial approved</b>
Supervisor's Comments:	